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IN THE

Supreme Court of the United States

October Term, 1964.

No. 467

RAYMOND COHEN,

Petitioner,

v.

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an Unincorporated Association, by THOMAS GRAHAM, CARMEN GRASSO, ANTHONY HNIZDO, JR., KARL M. JENSEN, JOHN C. JONES, EDWARD P. McCORMICK, JOHN REGAN, WILLIAM D. STASEN and ROBERT D. THOMAS, Trustees ad Litem,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Above, the Chief Justice and the Associated Justices of the Supreme Court of the United States:

RAYMOND COHEN respectfully petitions by his counsel, ABRAHAM J. BREM LEVY and STANFORD SHMUKLER, for a writ of certiorari to review a judgment of the United States Court of Appeals for the Third Circuit which affirmed a judgment of the United States District Court for the Eastern District of Pennsylvania.

CITATIONS TO OPINIONS BELOW.

The opinion of the Trial Court (April 5, 1963) in Cause No. 14,602 is unreported and appears in the certified joint appendix at page 87(a).

The opinion of the Trial Court in Cause No. 14,603 (June 26, 1963) is unreported and appears in the certified joint appendix at page 94(a).

The judgment of the United States Court of Appeals for the Third Circuit is unreported and is printed in Appendix "A" hereto (p. 1a).

JURISDICTION.

The judgment of the United States Court of Appeals for the Third Circuit entered June 11, 1964, is unreported and is printed in Appendix "B" hereto (p. 3a).

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

I. Whether the interpretation by a federal court of the provisions of the Labor-Management Reporting and Disclosure Act of 1959, P. L. 82-257, in giving judgment against elected Union officers in favor of the Union for funds expended by the Union to defray their legal expenses, paid pursuant to a resolution of an overwhelming majority of Union members present at a regular monthly meeting, was a misinterpretation of the act prejudicial to the petitioner and not warranted by the facts and circumstances of the case?

II. Whether action by a federal court in granting an injunction against a labor union, effectuating its interpretation of the Labor-Management Reporting and Disclosure Act of 1959, P. L. 82-257, enjoining payment of salaries to duly elected officers against whom a judgment had been

entered by the court to repay funds paid by the Union pursuant to a resolution of an overwhelming majority of Union members present at a regular monthly meeting, was a misinterpretation of the Act prejudicial to the petitioner and not warranted by the facts and circumstances of the case?

STATEMENT.

This suit was instituted by nine members of the Union who questioned the propriety of certain attorney's fees paid by the Union on behalf of its officers in the light of the provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (1959), 29 U. S. C. A. 121.

Subsequent to the institution of this suit, the decision in which became the basis for Appeal No. 14,602, another action was filed seeking an injunction against the Union to prevent payment of salary earned by your petitioner, who was an elected officer (Secretary-Treasurer) of the Union. From that decision of the district court granting an injunction unless a bond to insure payment of judgment, interest and costs was entered, appeal No. 14,603 was taken.

The circuit court granted permission to consolidate both appeals for printing and argument purposes.

On April 5, 1963 (Appeal No. 14,602), Judge Body entered judgment in the sum of $24,921.41 in favor of the plaintiff and against the individual defendants.

On April 10, 1963, motions and reasons for a new trial were filed.

On April 17, 1963 (Appeal No. 14,603), a motion for an injunction was filed seeking to enjoin the Union and the individual union officer defendants from paying or receiving weekly salaries for services rendered.

On June 26, 1963, Judge Body filed a memorandum opinion sur motion for injunction wherein he indicated that a mandatory injunction would issue forthwith unless the defendants would enter a bond of $30,000 approved by the court to secure payment of judgment, interest and costs.

On July 2, 1963, Judge Body entered an injunction order restraining intervening defendant (Local 107) from making any further payments of money to individual defendants until said defendants entered a bond for $30,000 as security for payment of judgment, interest and costs.

On July 9, 1963, defendants entered such a bond through the United Bonding Insurance Co. approved by Lord, Jr., J.

On August 1, 1963, notice of appeal was filed.

The question of the construction and interpretation of the Labor-Management Reporting and Disclosure Act of 1959 which was resolved against the defendants and the subsequent entry of an injunction enjoining the Union from paying the appellant's salary which he earned as an elected official of the Union, unless and until a bond in the amount of $30,000 was entered to guarantee payment of the judgment, interest and costs, were all raised by counsel at the trial level and argued at the time as well as in the circuit court.

REASONS FOR GRANTING THE WRIT.

I. The Interpretation by the Federal Court of the Provisions of the Labor-Management Reporting and Disclosure Act of 1959, P. L. 82-257, in Giving Judgment Against Elected Union Officers in Favor of the Union for Funds Expended by the Union to Defray Their Legal Expenses, Paid Pursuant to a Resolution of an Overwhelming Majority of the Members Present at a Regular Monthly Meeting, Was a Misinterpretation of the Act Prejudicial to Petitioner and Not Warranted by the Facts and Circumstances of the Case.

Nowhere in the Labor-Management Reporting and Disclosure Act of 1959, do we find authority which confers jurisdiction on the federal courts to monitor the decisions of the members of a Union or how Union funds may be expended. Sub-section 501(a) of the Act, under which the courts below acted, deals with the fiduciary responsibility of the officers of the union and in no way purports to regulate the action of the members of the union on internal union matters.

The entire history of this sub-section, including the Senate investigations preceding its enactment, make it clear that Congress was seeking to protect the members of the unions from the unilateral, unauthorized action of their officers.

Congress emphasized this in sub-section 2(b) of the Act forming part of its declaration of findings, purposes and policy.

However, the decisions of the courts below have placed the federal courts directly in the business of regulating the internal affairs of unions. Every membership action resulting in the expenditure of union funds, under the rulings below, becomes a matter for federal court supervision at the request of even one dissident member of the union.

Under this interpretation of the Act of 1959, the federal courts will soon have their dockets crowded with internal union disputes; at a time when the court dockets are already crowded, and where internal union disputes have traditionally been left to the machinery of union remedies. Congress certainly did not intend to so burden the federal courts.

Nothing could be more disruptive of the normal functions of labor unions than to have decisions on internal affairs resolved by the membership constantly being subject to review by the federal courts at the insistence of those who may have lost out on the voting at regular membership meetings. Congress in enacting the Labor-Management Reporting and Disclosure Act of 1959 certainly did not intend to strike so fatal a blow at organized labor. Indeed, the language of sub-section 501(a) requires officers of a labor organization to expend the funds of the organization in accordance with the constitution, by-laws, or resolutions of the governing body made thereunder. That is exactly what the petitioners did in the instant case. They expended funds of the union in accordance with a resolution adopted by the governing body under the constitution of the International Union. Senator Kennedy, one of the architects of the Labor-Management Reporting and Disclosure Act, made clear the right of the membership to decide how the funds of a labor organization were to be expended when he reviewed the report of the Committee of Conference for the Senate at p. 16415 of the Congressional Record (86th Congress, 1st Sess., September 3, 1959, Vol. 105, No. 154):

> "The bill does not limit in any way the purposes for which the funds of a labor organization may be expended or the investments which can be made. Such decisions should be made by the members in accordance with the constitution and by-laws of their union. Union officers will not be guilty of breach of trust under this

section when their expenditures are within the authority conferred upon them either by the constitution and by-laws, or by a resolution of the executive board, convention or other appropriate governing body—including a general meeting of the members—not in conflict with the constitution and by-laws. This is also made clear by the fact that Sub-section 501(a) requires the special problems and functions of a labor organization be taken into consideration in determining whether union officers and other representatives are acting responsibly in connection with their statutory duties. The problems with which labor organizations are accustomed to deal are not limited to bread and butter unionism or to organizations and collective bargaining alone, but encompass a broad spectrum of social objectives as the union may determine."

This same statement was made in the House report on the House version of the bill. Senator McClellan, who had headed up the investigation in the labor and management field, also emphasized that the legislation enacted by the Congress was not intended to interfere with membership action. He stated at page 5857 of the Congressional Record (86th Congress, 1st Sess., April 23, 1959, Vol. 105, No. 62):

"I may say that there was never any idea of my trying to curb the authority of the members of the union to do whatever the members want to do; rather, it is my intention to protect the members from having the members of a board or committee vote to do just about anything they want to do, as has been the case in many instances."

Even more important, the draftsmen of the Act stressed that union officials should be able to operate freely under the authority of a resolution passed by the membership, without being charged with the duty to determine whether the membership was acting within the scope of the Union's

objective. Congressman O'Hara pointed this out when he stated the following at page 14356 of the Congressional Record (86th Congress, 1st Sess., August 12, 1959, Vol. 105, No. 137):

> "Nor is it our intention that the courts, State or Federal, or any other Governmental agency, shall second guess union officers and employees on the question of whether a particular investment or expenditure is included within the 'special problems and functions of a labor organization.' If it is made in accordance with, and for the purpose permitted by, the constitution, by-laws or regularly adopted resolution of the union's constitutional governing bodies, the officer or employee will not be required at his peril to determine whether or not the constitution, by-laws or resolution goes beyond the legitimate purposes and objectives of the organization. To do this would place them in an impossible position and would paralyze the legitimate operations of the unions. If an officer or employee of a labor organization failed to invest or expend the union's funds in accordance with the wishes of the membership, he would be guilty of a breach of his duties to the organization, and if he did act in accordance with their wishes, he might at some later time be told by a court of law that he breached the trust placed in him by doing so. The intention of this section is simply that union officers and employees must act as the agents of the membership. They must conform their actions to the will of the membership, and they will be held strictly accountable for any loss to the organization or gain to themselves when they do not do so."

It is submitted that the decision of the court below misinterprets the overall purpose of Congress in enacting the Labor-Management Reporting and Disclosure Act of 1959. The court below strikes down the action of the mem-

bership of a union regularly taken at a meeting of the union in the name of the Labor-Management Reporting and Disclosure Act of 1959 when the law was passed to restrict the actions of union officials taken without the authority of the union membership.

Thus, the far-reaching effect of the court's decision is that those provisions of the 1959 Act which were adopted to control the actions of officers of unions have been made the basis for monitoring the unions, themselves.

THE LETTER AND SPIRIT OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

The decisions of the courts below violate the letter and the spirit of the Labor-Management Reporting and Disclosure Act of 1959, despite their claim of upholding the letter and spirit of that Act.

As to the "letter" of the Act, no specific provision prohibits the expending of union funds in accordance with the Resolution of September 20. Indeed, sub-section 501(a) specifically authorizes union officers to spend the funds of the union in accordance with the resolutions of the governing body.

With regard to the "spirit" of the 1959 Act, it is submitted that the legislative history makes it clear that Congress rejected just such a prohibition which the District Court and the Court of Appeals here enforce. The courts below have done what Congress specifically refused to do.

The question of whether union funds should be permitted to be used for the payment of legal fees of officers of the union was directly considered by Congress in the discussions, debates and conferences leading up to the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (1959), 29 USCA 141. In the Senate Labor Committee, the original Senate version of the bill (The Kennedy-Ervin Bill) was amended through

the efforts of the minority by a number of provisions which included sub-section 107(b). This sub-section prohibited both unions and employers from directly or indirectly paying the fine, or *paying or advancing the cost of defense,* of any of their officers, agents, employees, or representatives, who is indicted or convicted of any violation of any provision of the bill. In the event any such person is acquitted, the section provided that he may be reimbursed for expenditures necessarily incurred in his defense. S. Rep. No. 187, 86th Congress, 1st Sess. (1959); U. S. Code Congressional and Administrative News, 1959 (Special Pamphlet, 86th Congress, 1st Sess.) p. 3031. The minority members in their report to the Senate described this amendment they were successful in having adopted as follows (S. Rep. No. 187, 86th Congress, 1st Sess. (1959); U. S. Code Congressional and Administrative News, 1959, *supra* p. 3068):

> "Section 107(b): our amendment adds a new Subsection prohibiting a union or an employer from paying the fine or *costs of defense of any officer, agent or employee indicted for or convicted for any violation of the act.* If the person is acquitted he may be reimbursed for his expenses. Our amendment therefore prohibits the funds of a union or corporation from being used in such an improper manner." [Emphasis supplied.]

The bill passed by the House (The Landrum-Griffin Bill) did not contain a prohibition against the payment by the union of the legal fees of its officers, but instead subsection 503(b) of that bill prohibited the payment of the fine of a convicted officer. The Conference Committee of the Senate and House rejected sub-section 107(b) which appeared in the Senate version of the bill and adopted the House version as contained in sub-section 503(b). Thus, the bill as finally passed by Congress and signed by the President into law contained only a prohibition against the payment by the union of the fines of convicted officers

and no prohibition against the use of union funds for the payment of the legal fees for the defense of union officers.

The federal courts have consistently held that in construing an act of Congress it is proper to consider the reports of the committees of the two Houses of Congress and of the conference committee of both in the progress of the original bill through its enactment. *S. E. C. v. Sunbeam Gold Mines Co.*, 95 F. 2d 699, 701 (9th Cir. 1938); *S. E. C. v. Robert Collier & Co., Inc.*, 76 F. 2d 939 (2nd Cir. 1935). In the latter case the court said at page 941: "The amendments of a bill in committee are fertile sources of interpretation."

In the leading case of *Pennsylvania Railroad Co. v. International Coal Co.*, 230 U. S. 184 (1913), the Supreme Court of the United States emphasized that the rejection by Congress of a proposed provision when a bill is finally enacted precludes the inclusion of that provision by interpretation later when the act comes before the courts.

In *Atlantic Coastline Railroad Co. v. United States*, 66 Ct. Cl. 378 (1928), the United States Court of Claims interpreting the Revenue Act of 1917 and 1918 found that certain exemptions originally included in the Act of 1917 when it was reported to the House were eliminated later in the final passage of the Act and a substitute provision inserted. The court said on page 393:

> "It seems to us that the elimination of the specific provisions in the Revenue Act of 1917, as first reported to the House, exempting 'employees relief associations operated on a lodge system or local cooperative plan, organized and conducted solely by the members thereof for the exclusive benefit of its members and not for profit,' is very persuasive as indicating the intention that they were not to be exempt . . ."

The court also quoted with approval the following language on page 393:

> "The rejection by Congress of a specific provision contained in an act as originally reported is most persuasive to the conclusion that the act not be so construed as in effect to include that provision."

Other federal cases showing the weight given by federal courts to committee reports and amendments of bills as they pass through the two Houses of Congress are *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 474 (1921); *United States v. St. Paul, M. & M. Railroad Co.*, 247 U. S. 310, 318 (1918); *Manhattan Properties, Inc. v. Irving Trust Co.*, 291 U. S. 320, 335 (1934); *Connole v. Norfolk and W. Railway Co.*, 216 Fed. 823, 824 (1914).

This legislative history reveals the "spirit" and "intent" of the Act with regard to this specific question.

The district court struck down the Resolution of September 20 and enjoined the payment of Union funds to officers for salaries earned on the ground that the Resolution was "ultra-vires."

Chief Judge Clary in this same matter on an application for an injunction to prevent the Union from expending additional funds for the payment of officers' counsel fees, said in an opinion filed on March 24, 1960 (182 F. Supp. 608, affirmed 284 F. 2d 162 (3d Cir. 1960) (p. 54(a) joint appendix):

> "It is true that from the general objectives and purposes of a particular trade union, certain ancillary powers reasonably necessary for their attainment may be implied. In determining whether a particular act falls within this admittedly broad latitude of action, the Court must take into consideration all of the factors surrounding it, i.e., the stated purpose of the action, its immediate effect, its possible future benefit to the union, etc. This is necessary in order to determine whether the union, in light of the authority derived from its constitution, has a sufficient interest in

the action to empower it to so act. If it has, a court of law will not interfere regardless of the wisdom or propriety of the act."

Thus, the district court leaves no doubt that if the Union did have sufficient interest in the relevant legal actions, the legality of the September 20 resolution would be unassailable regardless of its wisdom or propriety.

To properly determine whether Local 107 acted within its purposes and objectives in adopting the resolution of September 20, it is necessary to review the action of the union in adopting the resolution itself and the events that led up to that action. In the first place, the legitimate union purpose supporting the validity of the resolution is announced in the very body of the resolution in language which fits squarely within the purposes set out in Article I, § 2 of the Constitution of the International Union. Among these purposes is the "instilling confidence, good will and understanding between our membership and their employers, which will have the effect of preventing unnecessary conflicts or serious misunderstandings between the membership and their employers, and which will further encourage cooperation and fair dealing with all employers so as to secure for our membership reasonable hours, fair wages and approved working conditions."

The overwhelming majority of the members attending the regular monthly meeting of September 20 made it very clear that they were not voting to authorize the spending of union funds to pay the legal expenses of the officers merely for the purpose of lending a helping hand to their officers on matters not of deep concern to the union. Rather, they stated that they were voting to spend union funds for the purpose of protecting the very existence of the union, and its strong bargaining position in regard to its good contracts and good working conditions.

The record is replete with evidence establishing that the Union had a substantial and direct interest in the legal

actions involved quite apart from the interest of the Union officials themselves.

There can be no doubt but that the most important legal proceedings referred to in this case, and which prompted the Resolution of September 20, were related to the action of the District Attorney of Philadelphia in petitioning for a special investigating grand jury to inquire into the affairs of the Union and into the actions of the officers of the Union in petitioning the Supreme Court of Pennsylvania to prohibit the special grand jury investigation. The officers of the Union, one of whom is the petitioner herein, were not defendants charged with looting the treasury of the Union in these proceedings, but were the moving parties seeking to stop the illegal sweeping inquiry into Union activities.

A reading of the petition of the district attorney for a special grand jury investigation, and of the statements of the judge who granted the petition, makes it abundantly clear that the grand jury investigation was aimed not only at the alleged wrongdoings of the officers of the union, but also at the very operation of the union itself and the methods by which it obtained its objectives and certain of its contractual advantages. The district attorney's petition and the judge's charge to the special grand jury accused the union itself—not only the officers of the union—of wrongdoing and announced a program of inquiry which threatened to expose the union daily to condemnation in newspaper headlines and loss of effectiveness as a bargaining unit.

How can it be reasonably argued that the Union did not have a substantial interest in the proceedings relating to the district attorney's petition for a special grand jury investigation? It is submitted that the union was properly concerned over the proposed grand jury investigation which was aimed, according to the district attorney's petition, at finding out whether the union was using illegal or improper

methods of obtaining its union objectives and purposes. A grand jury investigation with all of its attending publicity, indiscriminate accusations, and political overtones is not a proper vehicle in Pennsylvania for such an inquiry as the Supreme Court of Pennsylvania subsequently held with regard to the district attorney's petition. *In the Matter of Grace, et al.*, 397 Pa. 254, 154 A. 2d 592 (1959).

The Supreme Court of Pennsylvania in prohibiting the grand jury investigation stated that the district attorney's petition contained mostly "glittering generalities." The Supreme Court specifically found that the proposed inquiry was aimed at the union and indicated the dangers of such an inquiry by the following:

> "But it must remain forever clear that *if one union may be investigated,* so may one store, one bank, one newspaper, one railroad, one local industry. The situation in such a single enterprise would have to be grave indeed to pose a threat to general public safety or to public health at large. A grand jury is not a busybody or an instrument in a reform; it is an arm of the criminal court, one of its emergency weapons to be used sparingly and with great caution." [Emphasis supplied.]

It surely is one of the paramount purposes of the union to protect itself from what it considers untrue and unfounded charges of wrongdoing on the part of the union itself. This is especially true when such charges are presented to an investigating grand jury which has been convened in violation of the law of Pennsylvania. To bar the membership of the union from using the funds of the union for such a purpose is to strip the union of its ability to preserve itself and to render it helpless under attack.

II. The Action by a Federal Court in Granting an Injunction Against a Labor Union, Effectuating Its Interpretation of the Labor-Management Reporting and Disclosure Act of 1959, P. L. 82-257, Enjoining Payment of Salaries to Duly Elected Officers Against Whom a Judgment Had Been Entered by the Court to Repay Funds Paid by the Union Pursuant to a Resolution of an Overwhelming Majority of Union Members Present at a Regular Monthly Meeting, Was a Misinterpretation of the Act Prejudicial to the Petitioner and Not Warranted by the Facts and Circumstances of the Case.

On April 17, 1963, while a motion for a new trial was pending, respondent filed a motion for an injunction to enjoin the Union from paying, and the individual defendants from receiving their weekly salaries as elected officers of the Union.

The trial court, after argument, entered an order on July 2, 1963, enjoining the Union from paying the officer-defendants' salaries for services rendered and the officer-defendants from accepting said salaries unless or until a $30,000 bond would be entered to guarantee the payment of judgment, interest and costs.

There is no precedent for this motion or for the court's action. Plaintiff's statement in par. 4 of the motion, that defendants are being permitted to use Union funds to assist them in their defense in the criminal proceeding now being tried, is completely untenable. They are not using Union funds, they are using their own funds which they have earned and will earn as officers of the Union. Defendants' right to salaries has never been an issue in this case, and was not ruled upon by the court in its opinion. It is submitted that the defendants have a right to their salaries and can use the money they earn in any proper and lawful manner they wish.

Apparently plaintiff's only reason for seeking this injunction is to reach funds belonging to the defendants

prior to the finality of the judgment. The motion fails to allege that the defendants are insolvent and that the judgment if finally affirmed cannot be collected in any other way. It is submitted that the absence of such an allegation and proof is fatal to the motion since expediency alone has never been held to be a good ground for injunction.

The federal courts have repeatedly held that an injunction will be issued only where irreparable injury or damage is threatened. In a recent opinion, the Federal District Court of South Dakota defined irreparable damage as follows:

> "Irreparable injury or damage which may be prevented by injunction includes damage irreparable in the sense that it cannot be estimated by an accurate standard but only by conjecture . . . such damage does not have reference to amount of damage caused, but rather to difficulty of measuring amount of damages inflicted."
>
> *Schuetzle v. Duba*, 201 F. Supp. 754 (D. C. S. D. 1962)

Clearly, under this definition, the instant case does not provide any basis for an injunction. Here there is no question about definiteness of the damages, and there is no need to conjecture. The judgment of the court is in a definite sum. And no difficulty remains in measuring the amount of damages involved.

The standard of irreparable injury applies even where equity jurisdiction has already attached as in the instant case. In *Automatic Dialing Corporation v. Maritime Quality Hardware Co.*, 78 F. Supp. 558 (D. C. Me. 1948), the district court states:

> "An injunction is appropriate in this court's opinion if a threatened injury is irreparable or cannot be adequately compensated for by damages. This is a prerequisite to use of the injunctive process, *even where* equity jurisdiction has already attached." [Emphasis supplied.]

Again, the district court used the standard of injury which cannot be adequately compensated for by damages. In the instant case, the court has ruled that a specific loss was suffered by the Union and that a specific amount of damages occurred. Clearly, the court's ruling is a finding that the injury can be adequately compensated for by damages and the court has set the amount.

Equally pertinent is the language found in *Revere Copper and Brass v. Economy Sales Co.*, 127 F. Supp. 739 (D. C. Mo. 1944). Quoting from the language used by the Supreme Court of Connecticut, the Federal District Court in this case stated as follows:

> "Whether damage is to be viewed by a court of equity as 'irreparable damage', or not depends more upon the nature of the right which is injuriously affected than by a pecuniary measure of loss suffered and the basis of injunctive relief in such a case is not past violations, but threat of future ones."

Clearly, under this phrasing of the rule, an injunction is not proper in the instant case. Here the plaintiff is basing its claim for an injunction only on a pecuniary measure of loss and also only on the basis of past violations. The motion depends solely on the finding of the court that the defendants erred in the past in using funds from the Union treasury for the payment of their legal fees. This is not so because funds were used pursuant to a resolution (September 20) passed and authorized by an overwhelming majority of the members at a regular monthly meeting. Nowhere in the motion is there any allegation of a threat of future violations. Thus, plaintiff seeks injunctive relief solely to collect a definite measure of damages already determined by the court through its judgment where there exists no threat of future violations. No federal court has ever permitted injunctive relief under such circumstances. Plaintiff's proper course of action is to await the final determination of this case, and if the judgment is finally upheld,

the processes of law applicable to the enforcement of judgments are available to it and not the extraordinary process of injunction.

Further, by its unusual motion for an injunction, plaintiff in effect seeks to circumvent the Pennsylvania law prohibiting garnishment of wages and salaries. For indeed, that is exactly what plaintiff is seeking to do, attach the wages of the defendants in the possession of the employer, the Union. The Act of April 15, 1845, P. L. 459, § 5; 42 P. S. 886, expressly prohibits this. The Act in pertinent part provides as follows:

> ". . . Provided, however, that the wages of any laborer, or the salary of any person in public or private employment, shall not be liable to attachment in the hands of the employer."

In *Bell v. Roberts,* 150 Pa. Superior Ct. 469 (1943), the Superior Court even held that the statute applied to the amount owed to a lawyer for legal services which were being paid by the client periodically. The Act was also upheld by the Superior Court in *Wagner-Taylor Company v. McDowell,* 137 Pa. Superior Ct. 425 (1940).

In *United States v. Miller,* 229 F. 2d 839 (3rd Cir. 1956), the Court of Appeals, in an opinion by the late Judge Goodrich, held that this Pennsylvania statute prohibiting attachment of salary in the hand of the employer applies in federal cases.

Also, even if garnishment of wages were permissible in Pennsylvania, such garnishment would only occur where there was a final judgment. The Act of 1845, 42 P. S. 833, specifically provides for this. *Boyd v. Smith,* 5 Kulp. 380 (1889).

The court in its memorandum opinion sur motion for injunction suggests that the plaintiff is asking the court to conclude that the payment of weekly salaries to the officer-defendants for services rendered would, in effect, place

them in a position where they would be using Union funds in the form of their salaries in defense of criminal actions, and since the court has already indicated that *"Union funds"* cannot be paid to assist in the defense of criminal actions that they should, therefore, be enjoined.

Secondly, the court writes that the plaintiff suggests that since the Union has taken no action to collect the judgment, the court should aid the plaintiff in securing collection because if the Union takes no action at this time it was suggested that it would be impossible to collect the judgment. This conclusion is unwarranted under the facts and circumstances present here.

The court then indicates that it has decided to grant relief on the second ground, viz., that unless some action is taken by the Union to collect the judgment, even though it has not been finalized, that it might be impossible to collect the judgment, and bases its decision on the Labor-Management Reporting and Disclosure Act of 1959, 86-257, 29 U. S. C. 401 which permits duly established representatives of a minority of a union to enforce the rights of the union despite the wishes of the majority.

The court then goes on to say, *"No strain is placed on the law of this case by applying this basic proposition to require the union to use its best efforts and all means available to collect the judgment. It has been determined that money is owed by employees to the employer. The fact that they are officers is of no consequence."* [Emphasis supplied.]

The court below then again misinterpreted the provisions of the Act of 1959 by concluding that since money is owed by these officers to the Union, it was warranted in entering its order for a bond since this relief is the only proper way to secure and protect the plaintiff's right.

The petitioner respectfully submits that the result here was never contemplated by the Act, and a great hardship has been occasioned by so construing its provisions.

CONCLUSION.

For the foregoing reasons and because the issues raised in this petition are concerned with a difficult matter of great public importance, which will be oft recurring unless clarified and resolved by this Honorable Court, your petitioner prays that a writ of certiorari issue directed to the United States Circuit Court of Appeals for the Third Circuit to the end that this cause may be reviewed and determined, and that the judgment of the United States Court of Appeals for the Third Circuit be reversed and for such other and further relief as may seem proper.

Respectfully submitted,

ABRAHAM J. BREM LEVY,
STANFORD SHMUCKLER,
Attorney for Petitioner.

APPENDIX A.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 14,602 and 14,603

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AN UNINCORPORATED ASSOCIATION BY THOMAS GRAHAM, CARMEN GRASSO, ANTHONY HNIZDO, JR., KARL M. JENSEN, JOHN C. JONES, EDWARD P. McCORMICK, JOHN REGAN, WILLIAM D. STASEN AND ROBERT D. THOMAS, TRUSTEES AD LITEM

v.

RAYMOND COHEN, JOSEPH E. GRACE, EDWARD BATTISFORE AND EDWARD WALKER

HIGHWAY TRUCK DRIVERS & HELPERS, LOCAL 107,
Intervening deft.,

RAYMOND COHEN AND EDWARD WALKER,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Present: McLAUGHLIN and FORMAN, *Circuit Judges,* and LEAHY, *District Judge.*

JUDGMENT.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment filed April 5, 1963, of the said District Court in this case be, and the same is hereby affirmed, with costs.

ATTEST:

IDA O. CRESKOFF,
Clerk.

June 11, 1964.

APPENDIX B.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 14,602 and 14,603

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AN UNINCORPORATED ASSOCIATION BY THOMAS GRAHAM, CARMEN GRASSO, ANTHONY HNIZDO, JR., KARL M. JENSEN, JOHN C. JONES, EDWARD P. McCORMICK, JOHN REGAN, WILLIAM D. STASEN AND ROBERT D. THOMAS, TRUSTEES AD LITEM

v.

RAYMOND COHEN, JOSEPH E. GRACE, EDWARD BATTISFORE AND EDWARD WALKER

HIGHWAY TRUCK DRIVERS & HELPERS, LOCAL 107,

Intervening deft.,

RAYMOND COHEN AND EDWARD WALKER,

Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued March 5, 1964.

Before McLAUGHLIN and FORMAN, *Circuit Judges*, and LEAHY, *District Judge*.

OPINION OF THE COURT

(Filed June 11, 1964)

By McLaughlin, *Circuit Judge.*

When this matter was before us previously, 284 F. 2d 162 (1960), cert. den. 365 U. S. 833 (1961), we affirmed the order of the district court which had enjoined the officers of Local 107 from using Local funds to pay legal fees incurred in defense of civil or criminal actions then pending [as of March 24, 1960] against them in the Courts of the Commonwealth of Pennsylvania or in the United States District Court of the Eastern District of Pennsylvania. Prior to the issuance of the injunction said officers had actually handed out union money amounting to $24,921.41 for their own personal counsel fees. After the case was remanded to the district court it was tried to that court on a complete stipulation of facts (including an additional stipulation) supplemented by a brief oral statement and arguments by counsel. The court found that the plaintiffs as trustees ad litem for the Local were entitled to judgment against the defendants in the sum of $24,921.41 and this was so entered. Thereafter the district court on motion enjoined the payment of any money by the Local to the individual defendants until the judgment was satisfied or a court approved bond filed. That order was made for the purpose of assisting the union to obtain reimbursement of its funds under the judgment.

Defendants Cohen and Walker appeal from the money judgment against them and from the order enjoining the Local from paying the defendants' salaries until the judgment is satisfied or bond filed (an approved bond has since been filed). They argue that the money for their defense was rightly paid by the union because, according to them, "substantial union interests were involved". They contend, as an argument in favor of their payment of

their personal attorneys with union funds that "The primary matter in which the attorneys for the officers of Local 107 were engaged during the time of the September and October 1959 bills was the Special Investigating Grand Jury case." They state the union had a specific interest in the Special Grand Jury case and that under the prior district court opinion these fees could have been paid as they were. Regarding the money judgment, appellants claim that the resolution of the union authorizing the payments involved was ratified by an amendment to the International Union Constitution and therefore plaintiffs action is moot. Finally, they say that they "paid for the legal services rendered on their behalf in the criminal and civil proceedings brought against them personally separately out of nonunion funds."

The complaint in this cause charges the defendants, the governing officers of the Local, with conspiring to cheat and defraud the Local of large sums of money. It is a suit under Section 50(a) and (b) of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. A. § 501(a) and (b) which establishes fiduciary responsibility on the part of officers of a labor organization and provides for a federal district court action to enforce those responsibilities. The stipulation under which, as appellants state in their brief, this case "was presented to Judge Ralph C. Body * * *" for trial reads:

> "It is hereby stipulated between Samuel Dash, Esq., attorney for defendants, Raymond Cohen, Joseph E. Grace, Edward Battisfore, and Edward Walker, and Edward B. Bergman, Esq., attorney for plaintiff, that the legal services and costs which have been rendered and incurred by the firm of Dash and Levy, Esqs., for the officers of Highway Truck Drivers and Helpers, Local 107, are as appear in the copies of bills attached hereto as Exhibits 'A', 'B', 'C', 'D', and 'E'. All of these attached bills have in fact been paid,

and were paid out of funds belonging to Highway Truck Drivers and Helpers, Local 107, under the provisions of a resolution adopted by the local on September 21, 1959. A true and correct copy of this resolution is hereto attached and marked Exhibit 'F'.

"The legal services and costs referred to by Exhibits 'A' through 'E' were rendered by the firm of Dash and Levy, Esqs., in the specific civil and criminal cases listed in Exhibit 'G' attached hereto. The phrase 'officers' which appears at the top of Exhibit 'G' refers to the following persons only: Joseph E. Grace, Raymond Cohen, Edward Battisfore, Edward Walker, Walter Baker, Charles O'Lear and Michael Hession: Joseph E. Grace is President of Local 107, Raymond Cohen is Secretary-Treasurer, Edward Battisfore is Vice President, Edward Walker is Recording Secretary, Walter Baker, Charles O'Lear and Michael Hession are Trustees.

SAMUEL DASH
Attorney for Defendants
EDWARD B. BERGMAN
Attorney for Plaintiff"

The bills from the attorneys, totalling $24,921.41, are attached to the stipulation. The first is dated September 22, 1959 addressed to all the officers named in the stipulation. It is for "Retainer—legal services $15,000.00" and is marked "Pd". The second is dated September 22, 1959 addressed to "Mr. Raymond Cohen, Secretary and Treasurer Local 107. * * *." It is for "Professional services rendered March 1959 to September 1959: Legal fees $3500.00 Costs $1000.00 [Total] $4500.00". It is marked "Pd". The third is dated October 20, 1959. It is addressed to "Officers Local 107 * * *." It is for costs incurred "In the Matter of Joseph Grace, et al. for a writ of prohibition directed to Honorable Joseph E. Gold, Judge of

the Court of Common Pleas No. 6 of Philadelphia County * * *". These amount to $163.91 and the bill is marked "Pd". The fourth is dated October 21, 1959, is addressed to "Officers Local 107 * * *" and is for "Costs Expended: In re: In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace for the County of Philadelphia." It covers the cost of "3 bonds—Edward Walker, Raymond Cohen and J. Grace at $85.00 each $255. Filing fee petition for writ of habeas corpus $2.50." The bill is marked "Pd". The fifth bill is dated October 22, 1959. It is addressed to "Officers Local 107". It is "On account of retainer—professional services $5000.00" and is marked "Pd". The total of these sums is $24,921.41.

By the explicit language of the stipulation, the services for which the defendants were charged $24,921.41 (including disbursements) by their attorneys were rendered for them by those attorneys, "in the specific civil and criminal cases listed in Exhibit 'G' attached hereto". In the bills comprising Exhibit "G" there was no attempt to detail services. The sole references to specific cases are in the bills for costs, one having to do with the Grace petition, the second with the Commonwealth conspiracy charge and dealing with bail bonds for Walker, Cohen and Grace. The latter bill also included a filing fee for a petition for writ of habeas corpus in that prosecution.

The application of Messrs. Grace, Cohen, Battisfore, Walker, et als. for a writ of prohibition was to prevent the convening of a special grand jury to investigate the criminal activities which allegedly had been and were being committed by the officials, agents and members of the Local, "* * * systematic looting of Local 107's treasury by its officials, * * *", violence and threats of violence, blackmail, criminal exactions of tribute for superfluous services, etc. The petition for a writ of habeas corpus the filing fee for which is the other specific charge or disbursement noted, was filed by the attorneys in an attack

upon the indictment of Messrs. Cohen, Grace, Walker and four others for conspiracy to cheat and defraud the Local and its members of certain of their moneys, goods, chattels and other property.

The remaining actions with which we are presently concerned are a suit brought by the defendants to stop the International Union from conducting its own inquiry into the charges against the defendants and the case at bar. In all the disputes involved, the services by the attorneys for which they were paid $24,921.41 of the Local's funds were rendered in defense of and on behalf of the individual defendants. The attorneys never pretended then or now that they represented the Local or anyone else other than the officer defendants in the services rendered for the above stated sum. The fact that there was no itemized allocation of the total fees to particular cases is of no importance. The full amount of the fees officer defendants in connection with the charges against was admittedly for the services by the attorneys to the them of looting the treasury of the Local, etc. Payment thereof by the Local was inconsistent with the aims and purposes of the Labor Management Reporting and Disclosure Act, supra, and beyond the powers of the Local, 284 F. 2d 162, 164, supra.

Appellants also urge that the 1961 amendment to the International Union's Constitution ratifying the resolution of the Local which approved the payments makes moot plaintiffs' action to set aside those expenditures as ultra vires. That abortive attempt to validate the illegal 1959 resolution, could not of course in 1961 legitimatize the 1959 payments which have been held to have been wrongful. And the action of the International was just as inconsistent with Section 501 of the Labor Management Act as was the Local's ill conceived resolution.

The argument on behalf of appellants that the decision of the district court is premature because the appeal from the convictions of the defendants has not been determined is frivolous.

Finally, appellants complain of the district court entering an injunction against payment by the Local of salaries to the officer defendants until the amount they took from the union to pay their lawyers has been restored. It was represented to the district court that unless some steps were taken on behalf of the Local at that time it might become unlikely, perhaps impossible, to collect the judgment. As the court commented, "The Union chooses to neglect this right as it sought to disregard its rights in the first place by wrongfully paying counsel fees for the defendants." It is now four years and seven months since the money was wrongfully taken from the Local by the defendants. Nothing has appear d in that entire period to warrant further delay in the reimbursement process. Judge Body pointed out that "This is merely an injunction in aid of a judgment creditor to set off claims owed it by the judgment debtor." Under the Act, Section 501(b), the plaintiff trustees ad litem for the Local suing, as they are, with the express leave of the court are entitled to sue these defendants "* * * to recover damages * * *." The injunction prohibiting the employer Local from paying out any more of its funds to these employee officers while the judgment in favor of the Local against them remains unsatisfied is part of a reasonable effort to collect and protect the judgment. Not to so proceed might very well subject plaintiffs themselves to a charge of negligence in their duty on behalf of the Local.

The judgment of the district court will be affirmed.

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